

**§ 663.240 Are there particular intensive services an individual must receive before receiving training services under WIA section 134(d)(4)(A)(i)?**

- (a) Yes, at a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services.
- (b) The case file must contain a determination of need for training services under § 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.

**§ 663.245 What is the individual employment plan?**

The individual employment plan is an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.

**§ 663.250 How long must an individual participant be in intensive services to be eligible for training services?**

There is no Federally required minimum time period for participation in intensive services before receiving training services. The period of time an individual spends in intensive services should be sufficient to prepare the individual for training or employment. (WIA sec. 134(d)(4) (A)(i).)

**§ 663.310 Who may receive training services?**

Training services may be made available to employed and unemployed adults and dislocated workers who:

- (a) Have met the eligibility requirements for intensive services, have received at least one intensive service under § 663.240 of this part, and have been determined to be unable to obtain or retain employment through such services;
- (b) After an interview, evaluation, or assessment, and case management, have been determined by a One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program;
- (c) Select a program of training services that is directly linked to the employment opportunities either in the local area or in another area to which the individual is willing to relocate;

**§ 663.700 What are the requirements for on-the-job training (OJT)?**

- (a) On-the-job training (OJT) is defined at WIA section 101 (31). OJT is provided under a contract with an employer in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIA participant in exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer's extraordinary costs. (WIA sec. 101(31) )
- (b.) The local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. (WIA sec. 195(4).)
- (c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA sec. 101 (31) (C).)

**§ 663.705 What are the requirements for OJT contracts for employed workers?**

OJT contracts may be written for eligible employed workers when:

- (a) The employee is not earning a self-sufficient wage as determined by Local Board policy;
- (b) The requirements in § 663.700 are met; and
- (c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

**§ 663.710 What conditions govern OJT payments to employers?**

- (a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants.

- b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIA (sec.101(31)(B).)
- (c) Employers are not required to document such extraordinary costs.

#### **§ 663.715 What is customized training?**

Customized training is training

- (a) that is designed to meet the special requirements of an employer (including a group of employers);
- (b) that is conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training; and
- (c) for which the employer pays for not less than 50 percent of the cost of the training. (WIA sec. 101(8).)

#### **§ 663.720 What are the requirements for customized training for employed workers?**

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

- (a) The employee is not earning a self-sufficient wage as determined by Local Board policy;
- (b) The requirements in § 663.715 are met; and
- (c) The customized training relates to the purposes described in § 663.705(a)(3) or other appropriate purposes identified by the Local Board.

#### **§ 663.730 May funds provided to employers for OJT of customized training be used to assist, promote, or deter union organizing?**

No. Funds provided to employers for OJT or customized training must not be used to directly or indirectly assist, promote or deter union organizing.

#### **§ 664.460 What are work experiences for youth?**

- (a) Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. As provided in WIA section 129(c)(2)(D) and § 664.470, work experiences may be paid or unpaid.
- (b) Work experience workplaces may be in the private, for-profit sector; the non-profit sector; or the public sector.
- (c) Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences are appropriate and desirable activities for many youth throughout the year. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. The purpose is to provide the youth participant with the opportunities for career exploration and skill development and is not to benefit the employer, although the employer may, in fact, benefit from the activities performed by the youth. Work experiences may be subsidized or unsubsidized and may include the following elements:
  - (c)(1) Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS);
  - (c)(2) Exposure to various aspects of an industry;
  - (c)(3) Progressively more complex tasks;
  - (c)(4) Internships and job shadowing;
  - (c)(5) The integration of basic academic skills into work activities;
  - (c)(6) Supported work, work adjustment, and other transition activities;
  - (c)(7) Entrepreneurship;
  - (c)(8) Service learning;
  - (c)(9) Paid and unpaid community service; and
  - (c)(10) Other elements designed to achieve the goals of work experiences.
- (d) In most cases, on-the-job training is not an appropriate work experiences activity for youth participants under age 18. Local program operators may choose, however, to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant. (WIA sec. 129(c)(2)(D).)

#### **§665.200 What are required statewide workforce investment activities?**

Required Statewide workforce investment activities are:

- (a) Required rapid response activities, as described in § 665.310 of this part;
- (b) Disseminating:
  - (b)(1) The State list of eligible providers of training services (including those providing non- traditional training services), for adults and dislocated workers;
  - (b)(2) Information identifying eligible providers of on-the-job training (OJT) and customized training;
- (3) Performance and program cost information about these providers, as described in 20 CFR

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- (4) A list of eligible providers of youth activities as described in WIA section 123;
- (c) States must assure that the information listed in paragraphs (b)(1) through (4) of this section is widely available.
- (d) Conducting evaluations, under WIA section 136(e), of workforce investment activities for adults, dislocated workers and youth, in order to establish and promote methods for continuously improving such activities to achieve high-level performance within, and high-level outcomes from, the Statewide workforce investment system. Such evaluations must be designed and conducted in conjunction with the State and Local Boards, and must include analysis of customer feedback, outcome and process measures in the workforce investment system. To the maximum extent practicable, these evaluations should be conducted in coordination with Federal evaluations carried out under WIA section 172.
- (e) Providing incentive grants:
  - (e)(1) To local areas for regional cooperation among Local Boards (including Local Boards for a designated region, as described in 20 CFR 661.290);
  - (e)(2) For local coordination of activities carried out under WIA; and
  - (e)(3) For exemplary performance by local areas on the performance measures.
- (f) Providing technical assistance to local areas that fail to meet local performance measures.
- (g) Assisting in the establishment and operation of One-Stop delivery systems, in accordance with the strategy described in the State workforce investment plan. (WIA sec. 112(b)(14).)
- (h) Providing additional assistance to local areas that have high concentrations of eligible youth.
- (i) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary after consultation with the Governors, chief elected officials, and One-Stop partners, as required by WIA section 136(f). (WIA secs. 129(b)(2), 134(a)(2), and 136(e)(2).)

#### **§ 665.210 What are allowable Statewide workforce investment activities?**

Allowable Statewide workforce investment activities include:

- (a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at 20 CFR 667.210(a)(1).
- (b) Providing capacity building and technical assistance to local areas, including Local Boards, One-Stop operators, One-Stop partners, and eligible providers, which may include:
  - (b)(1) Staff development and training; and
  - (b)(2) The development of exemplary program activities.
- (c) Conducting research and demonstrations.
- (d) Establishing and implementing:
  - (d)(1) Innovative incumbent worker training programs, which may include an employer loan program to assist in skills upgrading; and
  - (d)(2) Programs targeted to Empowerment Zones and Enterprise Communities.
- (e) Providing support to local areas for the identification of eligible training providers.
- (f) Implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employment.
- (g) Carrying out such adult and dislocated worker employment and training activities as the State determines are necessary to assist local areas in carrying out local employment and training activities.
- (h) Carrying out youth activities Statewide.
- (i) Preparation and submission to the Secretary of the annual performance progress report as described in 20 CFR 667.300(e). (WIA secs. 129(b)(3) and 134(a)(3).)

#### **§ 665.220 Who is an "incumbent worker" for purposes of Statewide workforce investment activities?**

States may establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services under this subpart. An incumbent worker is an individual who is employed, but an incumbent worker does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers at 20 CFR 663.220(b) and 663.310. (WIA sec. 134(a)(3)(A)(iv)(I).)

#### **§ 667.266 What are the limitations related to sectarian activities?**

- (a) Limitations related to sectarian activities are set forth at WIA section 188(a)(3) and 29 CFR 37.6(f).
- (b) Under these limitations:
  - (b)(1) WIA title I financial assistance may not be spent on the employment or training of participants in sectarian activities. This limitation is more fully described at 29 CFR 37.6(f)(1).

(b)(2) Under 29 CFR 37.6(f)(1), participants must not be employed under title I of WIA to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship. However, as discussed in 29 CFR 37.6(f)(2), WIA financial assistance may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA sec. 188(a)(3).)

**§ 667.268 What prohibitions apply to the use of WIA title I funds to encourage business relocation?**

(a) WIA funds may not be used or proposed to be used for:

(a)(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(a)(2) Customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) Pre-award review. To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance.

(b)(1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

(b)(2) The review may include consultations with labor organizations and others in the affected local area(s). (WIA sec. 181(d).)

**§ 667.270 What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities do not displace other employees?**

(a) A participant in a program or activity authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:

(c)(1) Any other individual is on layoff from the same or any substantially equivalent job;

(c)(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA participant; or

(c)(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 667.600 of this part. (WIA sec. 181.)

**§ 667.272 What wage and labor standards apply to participants in activities under title I of WIA?**

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 USC 206(a)(1)) or the applicable State or local minimum wage law.

(b) Individuals in on-the-job training or individuals employed in programs and activities under Title I of WIA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(c) Allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally assisted program based on need other than as provided under the Social Security Act (42 USC 301 ~). (WIA sec. 181(a)(2).)

**§ 667.274 What health and safety standards apply to the working conditions of participants in activities under title I of WIA?**

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants in engaged in programs and activities under Title I of WIA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under Title I of WIA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(b)(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

**§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in sectarian activities?**

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations, codified at 29 CFR part 37. Under that definition, the term "recipients" includes State and Local Workforce Investment Boards, One-Stop operators, service providers, vendors, and subrecipients, as well as other types of individuals and entities.

(a)(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing WIA section 188, codified at 29 CFR part 37, and are administered and enforced by the DOL Civil Rights Center.

(a)(3) As described in § 667.260(a)(1), financial assistance provided under WIA title I may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, section 188 of WIA, and the regulations implementing these statutory provisions. (b) Under 29 CFR 37.6(f), the employment or training of participants in sectarian activities is prohibited, except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants.